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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,992	06/07/2006	Marvin Beno Wiebe	12131-0002US	1885

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EXAMINER	
GORDON, STEPHEN T	
ART UNIT	PAPER NUMBER
3612	
MAIL DATE	DELIVERY MODE
06/16/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/581,992	WIEBE, MARVIN BENO	
	Examiner	Art Unit	
	/Stephen Gordon/	3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 March 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-23* is/are pending in the application.

4a) Of the above claim(s) *20 and 21* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-19,22 and 23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *6/7/06;3/16/07 & 1/13/10* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 20-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in the reply filed on 7/29/09. As noted in the last office action, claim 21 which depends from non-elected withdrawn claim 20 is additionally withdrawn.

2. The amendment filed 1/13/10 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: newly submitted drawing figure 5c representation of protrusions. After rereading the instant specification in light of applicant's new figure 5c, the following should be noted. The specification as originally filed references the general use of *plural protrusions* (i.e. at least the use of *two* protrusions are clearly referenced) with the load bearing surfaces. While the examiner agrees with applicant that the specific *shape* of the protrusions shown in new figure 5c is appropriate, it is not clear that the instant specification as originally filed supports the use of *three* protrusions as now newly illustrated.

Applicant is required to cancel the new matter in the reply to this Office Action.

3. The disclosure is objected to because of the following informalities: with regard to applicant's specification changes submitted with the 1/13/10 amendment, the following should be noted.

Applicant's amendments to page 5 of the instant specification included in the 1/13/10 papers are objected to. Initially, applicant requests to "amend paragraph beginning on

line 6 of page 5 of the application". No such paragraph exists which resembles the added language to "amend". It appears applicant may have intended to *insert* the page 5 amendment immediately before the referenced paragraph on page 5 – line 6. Additionally, applicant's amended paragraph at page 5 – line 6 references new protrusions elements "36" while the newly submitted figure 5c apparently shows the protrusions as elements "42". Moreover, element "36" has previously been used by applicant to reference the device edge (e.g. see page 6 - line 5).

Appropriate correction is required.

4. After reconsideration and in view of applicant's comments in the response of 3/12/10, the previous rejection of claim 22 under section 112-first paragraph is withdrawn.

5. Claims 17-19 and 22, as newly amended, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
Claim 17 as newly amended, line 5 reference to "each of the load bearing surfaces" lacks clear antecedent basis. Note in line 2 a *single* load bearing surface over *both* the first and second body portions is apparently recited.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 17-19 and 22-23, as newly amended and as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Hurley '441.

Hurley teaches a load securing device with load bearing surfaces extending over first and second body portions 10,12. Element 14 defines a rib which extends along a length of the device body generally parallel to the surface as broadly claimed and as best understood. Notch 28 is formed between the body portions and could be used to engage a "ring" for attaching to a flexible member. For example, a large rubber band or elastomeric loop could be secured around notch portion 28 and would be capable of engaging a further flexible member. Such band or loop would clearly define a "ring" as such - noting no specific ring shape is recited (e.g. triangular-shaped ring etc.). Moreover, in as much as the ring per se is not a positively recited element of the instant claimed combination, the functional language relating thereto is given little patentable weight.

Claim 18, the device is configured as broadly claimed – see figure 3 etc.

Claim 19, the device is configured as broadly claimed.

Claim 22, at least elements 22 define protrusions and would function as broadly claimed – see figure 4 etc.

Claim 23, element 28 is deemed to fairly define a means for securing as broadly claimed - additionally note the discussion of the relied upon notch element 28 above.

8. Applicant's arguments filed 1/13/10 have been fully considered but they are not persuasive.

Regarding the application of the Hurley reference to the instant claims, applicant indicates that the relied upon Hurley rib 14 is not parallel to the load bearing surfaces as required. Notwithstanding the clarity issues raised with regard to the modified bearing surface language in base claim 17, the following should be noted. To the extent that at least longitudinal center lines of the relied upon rib 14 and bearing surfaces of elements 10 and 12 of Hurley extend in a direction "generally parallel to each other", the device is deemed configured as broadly claimed. Nowhere in the broad claim language of claims 17 or 23 is such a reading precluded. Moreover, if one were to interpret the elements of the instant device as applicant is apparently construing Hurley, it is not entirely clear that the instant invention would define "parallel" elements as such. Looking at figures 5A and 5B of applicant's specification for example, if one were to consider the full extent of rib 29, it could be construed as actually laying *perpendicular* to the defined bearing surfaces 25,27 (note also page 5 – lines 6-13 of the instant specification).

Regarding applicant's discussion of the recited notch (e.g. 34) as related to the relied upon notch 28 of Hurley, the following should be noted. As discussed above, notch 28 is formed between the body portions and could be used to engage a "ring" for attaching to a flexible member. For example, a large rubber band or elastomeric loop could be secured around notch portion 28 and would be capable of engaging a further flexible member. Such band or loop would clearly define a "ring" as such - noting no specific ring shape is recited (e.g. triangular-shaped ring etc.). Moreover, in as much as the ring

per se is not a positively recited element of the instant claimed combination, the functional language relating thereto is given little patentable weight. Finally regarding applicant's additional remarks directed toward the "means plus function" language of claim 23, such language is deemed anticipated by the notch 28 as discussed herein. As a final note, it is not entirely clear if applicant's "means plus function" language is intended to invoke a meaning as covered under section 112 - sixth paragraph. If such is applicant's intent, the record should be clarified. In either case, element 28 is deemed to define the "means for securing" as broadly claimed.

Applicant's comments directed toward the allowability of claim 20 are noted. In as much as claim 20 is currently withdrawn from consideration, response to these arguments is deferred until such time as the claim is rejoined. As previously noted, withdrawn claim 20 will be rejoined with the application upon finding of allowable subject matter in a generic claim from which it depends. At such time that rejoinder is appropriate, the examiner will make every effort to assist applicant in placing claim 20 in allowable form.

In general applicant should note, clearly applicant's invention *as disclosed* is different than the prior art and very likely defines patentable subject matter. The *claims* as currently presented and as best understood, however, are deemed sufficiently broad that application of the prior art under section 102 as detailed above is deemed warranted at this time.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen Gordon/
Primary Examiner
Art Unit 3612

stg